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Deckers Outdoor Corporation*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DECKERS OUTDOOR
CORPORATION, a Delaware
Corporation,

Plaintiff,

v.

TARGET CORPORATION, a Minnesota
Corporation; and DOES 1-10, inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF:**

1. TRADE DRESS INFRINGEMENT;

**2. PATENT INFRINGEMENT – U.S.
PATENT NO. D599,999**

**3. TRADE DRESS INFRINGEMENT
UNDER CALIFORNIA COMMON
LAW;**

**4. UNFAIR COMPETITION
CALIFORNIA UNFAIR BUSINESS
PRACTICES ACT, CAL. BUS. &
PROF. CODE, § 17200, ET. SEQ.;**

**5. UNFAIR COMPETITION UNDER
CALIFORNIA COMMON LAW**

JURY TRIAL DEMANDED

Plaintiff Deckers Outdoor Corporation for its claims against **Defendant
Target Corporation** (“Defendant”) respectfully alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff files this action against Defendant for trade dress infringement
and unfair competition under the Lanham Trademark Act of 1946, 15 U.S.C. §1051 et

1 seq. (the “Lanham Act”), patent infringement arising under the patent laws of the
2 United States, and for related claims under the statutory and common law of the state
3 of California. This Court has subject matter jurisdiction over the claims alleged in this
4 action pursuant to 28 U.S.C. §§ 1331, 1338.

5 2. This Court has personal jurisdiction over Defendant because Defendant is
6 incorporated, domiciled, and/or does business within this judicial district.

7 3. This action arises out of wrongful acts by Defendant within this judicial
8 district and Plaintiff is located and has been injured in this judicial district by
9 Defendant’s alleged wrongful acts. Venue is proper in this district pursuant to 28
10 U.S.C. § 1391 because the claims asserted arise in this district.

11 **THE PARTIES**

12 4. Plaintiff Deckers Outdoor Corporation (“Deckers”) is a corporation
13 organized and existing under the laws of the state of Delaware with an office and
14 principal place of business in Goleta, California. Deckers designs and markets
15 footwear identified by its many famous trademarks including its UGG® trademark.

16 5. Upon information and belief, Defendant Target Corporation is a
17 corporation organized and existing under the laws of the state of Minnesota with an
18 office and principal place of business located at 1000 Nicollet Mall, Minneapolis,
19 Minnesota 55403.

20 6. Deckers is unaware of the names and true capacities of Defendants,
21 whether individual, corporate and/or partnership entities named herein as DOES 1
22 through 10, inclusive, and therefore sues them by their fictitious names. Deckers will
23 seek leave to amend this complaint when their true names and capacities are
24 ascertained. Deckers is informed and believes and based thereon alleges that said
25 Defendant and DOES 1 through 10, inclusive, are in some manner responsible for the
26 wrongs alleged herein, and that at all times referenced each was the agent and servant
27 of the other Defendants and was acting within the course and scope of said agency and
28 employment.

7. Deckers is informed and believes, and based thereon alleges, that at all relevant times herein, Defendant and DOES 1 through 10, inclusive, knew or reasonably should have known of the acts and behavior alleged herein and the damages caused thereby, and by their inaction ratified and encouraged such acts and behavior. Deckers further alleges that Defendant and DOES 1 through 10, inclusive, have a non-delegable duty to prevent or not further such acts and the behavior described herein, which duty Defendant and DOES 1 through 10, inclusive, failed and/or refused to perform.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. Deckers' UGG® Brand

8. Deckers has been engaged in the design, distribution, marketing, offering for sale, and sale of footwear since 1975. Deckers owns several brands of footwear including UGG®, Koolaburra®, Teva®, Sanuk®, and Hoka One One®.

9. Deckers' UGG® brand remains one of the most recognized and relevant comfort shoe brands in the industry. Since 1978, when the UGG® brand was founded, the popularity of UGG® boots has steadily grown across the nation and even the globe. The UGG® brand has always been and remains highly coveted by consumers. This commitment to quality has helped to propel the UGG® brand to its current, overwhelming level of popularity and cemented its status as a luxury brand.

10. It has now been seventeen years since UGG® boots were first featured on Oprah's Favorite Things® in the year 2000, and Oprah emphatically declared on national television how much she "LOOOOOVES her UGG boots." The popularity of UGG® brand footwear has grown exponentially since then with celebrities including Kate Hudson and Sarah Jessica Parker among a myriad of others regularly donning them. UGG® sheepskin boots have become a high fashion luxury item and can be found on fashion runways around the world.

11. Deckers' UGG® products are distributed and sold to consumers through authorized retailers throughout the United States at point-of-sale and on the Internet,

1 including through its UGG® Concept Stores and its website www.ugg.com.

2 **B. Defendant's Infringing Activities**

3 12. Upon information and belief, Defendant is engaged in the retail sale of a
4 wide range of apparel and footwear. Defendant's retail stores are located nationwide,
5 including within this judicial district. Defendant's products can also be purchased
6 online at www.target.com, which is also available to consumers nationwide.

7 13. The present lawsuit arises from Defendant's willful infringement of
8 Deckers' UGG® boot designs, to which Deckers owns design patent and/or trade dress
9 rights, including rights to the UGG® "Bailey Button" boot, by certain of Defendant's
10 footwear products ("Accused Product"), an example of which is shown below.



18 ***Defendant's Accused Product***

19 14. Deckers is informed and believes and herein alleges that Defendant is a
20 competitor and has copied Deckers' boot designs in an effort to exploit Deckers'
21 reputation in the market.

22 15. Upon information and belief, Defendant may have sold additional
23 products that infringe upon Deckers' design patents and trade dresses. Deckers may
24 seek leave to amend as additional information becomes available through discovery.

25 16. Deckers has not granted a license or any other form of permission to
26 Defendant with respect to its trademarks, design patents, trade dresses, or other
27 intellectual property.

28 17. Deckers is informed and believes and herein alleges that Defendant has

acted in bad faith and that Defendant's acts have misled and confused and were intended to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant's Accused Product with Deckers, or as to the origin, sponsorship, or approval of Defendant's Accused Product by Deckers.

FIRST CLAIM FOR RELIEF

(Trade Dress Infringement - 15 U.S.C. § 1125(a))

18. Deckers incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

19. The UGG® Bailey Button boot was introduced in 2009 and the "Bailey Button Boot Trade Dress" is unique and distinctive, consisting of a combination of the following non-functional elements:

- Classic suede boot styling made famous by the UGG® brand;
- Overlapping of front and rear panels on the lateral side of the boot shaft;
- Curved top edges on the overlapping panels;
- Exposed fleece-type lining edging the overlapping panels and top of the boot shaft; and
- One or more buttons (depending on the height of the boot) prominently featured on the lateral side of the boot shaft adjacent the overlapping panels (hereinafter "Bailey Button Boot Trade Dress").



1 20. The Bailey Button Boot Trade Dress, which is a composite of the above-
2 referenced features, is non-functional in its entirety, visually distinctive, and is unique
3 in the footwear industry.

4 21. The design of the Bailey Button Boot Trade Dress is neither essential to
5 its use or purpose nor does it affect the cost or quality of the boot. There are numerous
6 other designs available that are equally feasible and efficient, none of which
7 necessitate copying or imitating the Bailey Button Boot Trade Dress. The aforesaid
8 combination of features provides no cost advantages to the manufacturer or utilitarian
9 advantages to the consumer. These features, in combination, serve only to render
10 Deckers' UGG® Bailey Button boots distinct and recognizable as goods originating
11 from Deckers' UGG® brand.

12 22. The Bailey Button Boot Trade Dress is an original design by Deckers and
13 has achieved a high degree of consumer recognition and secondary meaning, which
14 serves to identify Deckers as the source of footwear featuring said trade dress.

15 23. The Bailey Button Boot Trade Dress is one of the most well-recognized
16 and commercially successful styles of Deckers' UGG® brand of footwear, having been
17 featured on Deckers' advertising and promotional materials as well as in various trade
18 publications. Furthermore, the Bailey Button Boot Trade Dress has been featured in
19 connection with various celebrities, has received a large volume of unsolicited media
20 attention, and has graced the pages of many popular magazines nationwide and
21 internationally.

22 24. Deckers has spent substantial time, effort, and money in designing,
23 developing, advertising, promoting, and marketing the UGG® brand and its line of
24 footwear embodying the Bailey Button Boot Trade Dress. Deckers spends millions of
25 dollars annually on advertising of UGG® products, which include products bearing the
26 Bailey Button Boot Trade Dress.

27 25. Deckers has sold hundreds of millions of dollars worth of UGG®
28 products bearing the Bailey Button Boot Trade Dress.

1 26. Due to its long use, extensive sales, and significant advertising and
2 promotional activities, Deckers' Bailey Button Boot Trade Dress has achieved
3 widespread acceptance and recognition among the consuming public and trade
4 throughout the United States.

5 27. There are numerous other boot designs in the footwear industry, none of
6 which necessitate copying or imitating the Bailey Button Boot Trade Dress. However,
7 due to the popularity and consumer recognition achieved by the Bailey Button boot,
8 said design has often been the subject of infringement by third-parties, including
9 Defendant.

10 28. Deckers is informed and believes and herein alleges that Defendant is a
11 competitor and has copied Deckers' Bailey Button Boot Trade Dress in an effort to
12 exploit Deckers' reputation in the market.

13 29. The Accused Product produced, distributed, advertised and offered for
14 sale by Defendant bears nearly identical reproductions of the Bailey Button Boot Trade
15 Dress, such as to cause a likelihood of confusion as to the source, sponsorship or
16 approval by Deckers of Defendant's products.

17 30. Defendant's use of Deckers' Bailey Button Boot Trade Dress is without
18 Deckers' permission or authority and in total disregard of Deckers' rights to control its
19 intellectual property.

20 31. Defendant's use of Deckers' Bailey Button Boot Trade Dress is likely to
21 lead to and result in confusion, mistake or deception, and is likely to cause the public
22 to believe that Defendant's products are produced, sponsored, authorized, or licensed
23 by or are otherwise connected or affiliated with Deckers, all to the detriment of
24 Deckers.

25 32. Deckers has no adequate remedy at law.

26 33. In light of the foregoing, Deckers is entitled to injunctive relief
27 prohibiting Defendant from using Deckers' Bailey Button Boot Trade Dress, or any
28 designs confusingly similar thereto, and to recover all damages, including attorneys'

fees, that Deckers has sustained and will sustain, and all gains, profits and advantages obtained by Defendant as a result of its infringing acts alleged above in an amount not yet known, as well as the costs of this action.

SECOND CLAIM FOR RELIEF

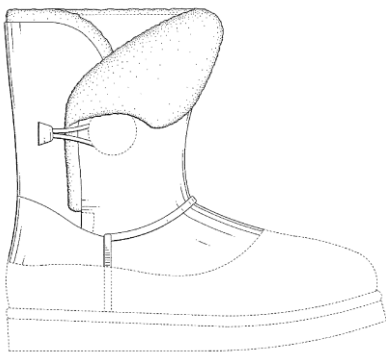
(Patent Infringement - U.S. Patent No. D599,999)

34. Deckers incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

35. Deckers is the owner of numerous design patents to the various styles of footwear it offers under its UGG® brand. These design patents include but are not limited to the “Bailey Button” boot (U.S. Patent No. D599,999 issued on September 15, 2009), a true and correct copy of which is attached hereto and incorporated herein as Exhibit A (“‘999 Patent”).

36. Deckers is the owner by assignment of all right, title and interest in and to the ‘999 Patent.

37. Defendant has used, caused to be produced, distributed, advertised, marketed, offered for sale, sold within the United States, and/or has imported into the United States footwear that is substantially similar to the ‘999 Patent in direct violation of 35 U.S.C. § 271. An example of the Accused Product is shown at the far right of the ‘999 Patent drawing and genuine UGG® Bailey Button boot below:



Design Patent D599,999



UGG® Bailey Button Boot



Defendant's Accused Boot

38. Defendant's aforesaid infringing acts are without Deckers' permission or authority and are in total disregard of Deckers' right to control its intellectual property.

1 39. As a direct and proximate result of Defendant's infringing conduct,
2 Deckers has been injured and will continue to suffer injury to its business and
3 reputation unless Defendant is restrained by this Court from infringing Deckers' '999
4 Patent.

5 40. Defendant's acts have damaged and will continue to damage Deckers, and
6 Deckers has no adequate remedy at law.

7 41. Deckers marks all footwear products embodying the design of the '999
8 Patent with "Pat. No. 599,999" on a product label in compliance with 35 U.S.C. § 287.

9 42. Given the widespread popularity and recognition of Deckers' Bailey
10 Button boot and the patent notice provided on the products themselves, Deckers avers
11 and hereon alleges that Defendant had pre-suit knowledge of Deckers' rights to the
12 '999 Patent and has intentionally copied said design on its own brand of products in an
13 effort to pass them off as if they originated, are associated with, are affiliated with, are
14 sponsored by, are authorized by, and/or are approved by Deckers.

15 43. In fact, Deckers has previously sued Defendant for infringement of the
16 '999 Patent. Defendant's pattern of infringing on the '999 design patent is further
17 evidence of willfulness and the intent to unfairly trade off of the goodwill established
18 by Deckers in its intellectual property.

19 44. On information and belief, Defendant's acts herein complained of
20 constitute willful acts and intentional infringement of the '999 Patent.

21 45. In light of the foregoing, Deckers is entitled to injunctive relief
22 prohibiting Defendant from infringing the '999 Patent and to recover damages
23 adequate to compensate for the infringement, including Defendant's profits pursuant to
24 35 U.S.C. § 289. Deckers is also entitled to recover any other damages as appropriate
25 pursuant to 35 U.S.C. § 284.

26 **THIRD CLAIM FOR RELIEF**

27 **(Trade Dress Infringement under California Common Law)**

28 46. Deckers incorporates herein by reference the averments of the preceding

1 paragraphs as though fully set forth herein.

2 47. Defendant's infringement of the Bailey Button Boot Trade Dress
3 constitutes common law trade dress infringement in violation of the common law of
4 the state of California.

5 48. Defendant's unauthorized use of the Bailey Button Boot Trade Dress has
6 caused and is likely to cause confusion as to the source of Defendant's products, all to
7 the detriment of Deckers.

8 49. Defendant's acts are willful, deliberate, and intended to confuse the public
9 and to injure Deckers.

10 50. Deckers has no adequate remedy at law to compensate it fully for the
11 damages that have been caused and which will continue to be caused by Defendant's
12 infringing conduct, unless it is enjoined by this Court.

13 51. The conduct herein complained of was extreme, outrageous, and was
14 inflicted on Deckers in reckless disregard of Deckers' rights. Said conduct was
15 despicable and harmful to Deckers and as such supports an award of exemplary and
16 punitive damages in an amount sufficient to punish and make an example of
17 Defendant, and to deter it from similar such conduct in the future.

18 52. In light of the foregoing, Deckers is entitled to injunctive relief
19 prohibiting Defendant from infringing the Bailey Button Boot Trade Dress, and to
20 recover all damages, including attorneys' fees, that Deckers has sustained and will
21 sustain, and all gains, profits and advantages obtained by Defendant as a result of its
22 infringing acts alleged above in an amount not yet known, and the costs of this action.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Unfair Competition California Unfair Business Practices Act, Cal. Bus. & Prof.**
25 **Code, § 17200, et. seq.)**

26 53. Deckers incorporates herein by reference the averments of the preceding
27 paragraphs as though fully set forth herein.

28 54. Defendant's appropriation, adoption and use of the Bailey Button Boot

1 Trade Dress, or in connection with the sale and offering for sale of footwear is likely to
 2 confuse or mislead consumers into believing that Defendant's goods are authorized,
 3 licensed, affiliated, sponsored, and/or approved by Deckers, thus constituting a
 4 violation of the California Unfair Business Practices Act, Cal. Bus. & Prof. Code, §
 5 17200, et. seq.

6 55. The deceptive, unfair and fraudulent practices set forth herein have been
 7 undertaken with knowledge by Defendant willfully with the intention of causing harm
 8 to Deckers and for the calculated purpose of misappropriating Deckers' goodwill and
 9 business reputation.

10 56. Defendant's use of Deckers' Bailey Button Boot Trade Dress has
 11 deprived Deckers of the right to control the use of its intellectual property.

12 57. As a direct and proximate result of Defendant's unlawful infringement,
 13 Deckers has suffered damages and will continue to suffer damages in an amount that is
 14 not presently ascertainable but will be proven at trial. Deckers is entitled to all
 15 available relief provided for in California Unfair Business Practices Act, Cal. Bus. &
 16 Prof. Code, § 17200, et. seq. including permanent injunctive relief.

17 58. Defendant committed the acts alleged herein intentionally, fraudulently,
 18 maliciously, willfully, wantonly and oppressively, with intent to injure Deckers in its
 19 business and with conscious disregard for Deckers' rights, thereby justifying awards of
 20 punitive and exemplary damages in amounts sufficient to punish and to set an example
 21 for others.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Unfair Competition Under California Common Law)**

24 59. Deckers incorporates herein by reference the averments of the preceding
 25 paragraphs as though fully set forth herein.

26 60. Defendant's infringement of the Bailey Button Boot Trade Dress
 27 constitutes unfair competition in violation of the common law of the state of
 28 California.

1 61. Defendant is a competitor of Deckers and has copied Deckers' boot
2 designs in an effort to exploit Deckers' reputation in the market.

3 62. Defendant's infringing acts were intended to capitalize on Deckers'
4 goodwill associated therewith for Defendant's own pecuniary gain. Deckers has
5 expended substantial time, resources and effort to obtain an excellent reputation for its
6 brands of footwear. As a result of Deckers' efforts, Defendant is now unjustly
7 enriched and is benefiting from property rights that rightfully belong to Deckers.

8 63. Defendant's acts are willful, deliberate, and intended to confuse the public
9 and to injure Deckers.

10 64. Deckers has no adequate remedy at law to compensate it fully for the
11 damages that have been caused and which will continue to be caused by Defendant's
12 infringing conduct, unless it is enjoined by this Court.

13 65. The conduct herein complained of was extreme, outrageous, and was
14 inflicted on Deckers in reckless disregard of Deckers' rights. Said conduct was
15 despicable and harmful to Deckers and as such supports an award of exemplary and
16 punitive damages in an amount sufficient to punish and make an example of
17 Defendant, and to deter it from similar such conduct in the future.

18 66. In light of the foregoing, Deckers is entitled to injunctive relief
19 prohibiting Defendant from infringing the Bailey Button Boot Trade Dress and to
20 recover all damages, including attorneys' fees, that Deckers has sustained and will
21 sustain, and all gains, profits and advantages obtained by Defendant as a result of its
22 infringing acts alleged above in an amount not yet known, and the costs of this action.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff Deckers Outdoor Corporation respectfully prays for
25 judgment against Defendant Target Corporation as follows:

26 1. A Judgment that Defendant has infringed Deckers' Bailey Button Boot
27 Trade Dress and '999 Patent and that said infringement was willful;
28

1 2. An order granting temporary, preliminary and permanent injunctive relief
2 restraining and enjoining Defendant, its agents, servants, employees, officers,
3 associates, attorneys, and all persons acting by, through, or in concert with any of them
4 from using Deckers' intellectual property, including, but not limited to:

5 a. manufacturing, importing, advertising, marketing, promoting,
6 supplying, distributing, offering for sale, or selling the Accused Product or any other
7 products which bear Deckers' Bailey Button Boot Trade Dress and/or any designs
8 confusingly similar thereto, as well as any products bearing designs that infringe upon
9 the '999 Patent and/or the overall appearance thereof;

10 b. engaging in any other activity constituting unfair competition with
11 Deckers, or acts and practices that deceive consumers, the public, and/or trade,
12 including without limitation, the use of designations and design elements used or
13 owned by or associated with Deckers; and

14 c. committing any other act which falsely represents or which has the
15 effect of falsely representing that the goods and services of Defendant are licensed by,
16 authorized by, offered by, produced by, sponsored by, or in any other way associated
17 with Deckers;

18 3. Ordering Defendant to recall from any distributors and retailers and to
19 deliver to Deckers for destruction or other disposition all remaining inventory of all
20 Accused Product and related items, including all advertisements, promotional and
21 marketing materials therefore, as well as means of making same;

22 4. Ordering Defendant to file with this Court and serve on Deckers within
23 thirty (30) days after entry of the injunction a report in writing, under oath setting forth
24 in detail the manner and form in which Defendant has complied with the injunction;

25 5. Ordering an accounting by Defendant of all gains, profits and advantages
26 derived from its wrongful acts pursuant to 15 U.S.C. § 1117(a) and 35 U.S.C. § 289;

27 6. Awarding Deckers all of Defendant's profits and all damages sustained by
28 Deckers as a result of Defendant's wrongful acts, and such other compensatory

1 damages as the Court determines to be fair and appropriate;

2 7. Awarding treble damages in the amount of Defendant's profits or
3 Deckers' damages, whichever is greater, for willful infringement;

4 8. Awarding applicable interest, costs, disbursements and attorneys' fees;

5 9. Awarding Deckers' punitive damages in connection with its claims under
6 California law; and

7 10. Such other relief as may be just and proper.
8

9 Dated: February 16, 2017 BLAKELY LAW GROUP
10

11 By: /s/ Jessica C. Covington
12 Brent H. Blakely
13 Cindy Chan
14 Jessica C. Covington
15 *Attorneys for Plaintiff*
16 *Deckers Outdoor Corporation*
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Deckers Outdoor Corporation hereby demands a trial by jury as to all claims in this litigation.

Dated: February 16, 2017 BLAKELY LAW GROUP

By: /s/ Jessica C. Covington
Brent H. Blakely
Cindy Chan
Jessica C. Covington
Attorneys for Plaintiff
Deckers Outdoor Corporation

EXHIBIT A

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US00D599999S

(12) **United States Design Patent**
MacIntyre

(10) **Patent No.:** **US D599,999 S**
(45) **Date of Patent:** **** Sep. 15, 2009**

(54) **PORTION OF A FOOTWEAR UPPER**

EP 00718002-0006 4/2007

(75) Inventor: **Jennifer MacIntyre**, Santa Barbara, CA (US)

(73) Assignee: **Deckers Outdoor Corporation**, Goleta, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/326,868**

(22) Filed: **Oct. 27, 2008**

(51) **LOC (9) Cl.** **02-99**

(52) **U.S. Cl.** **D2/970; D2/911; D2/946**

(58) **Field of Classification Search** D2/896,
D2/909-915, 946, 970, 973, 974; 36/45,
36/50.1, 83, 3 A, 7.1 R, 113

See application file for complete search history.

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Primary Examiner—Stella M Reid

Assistant Examiner—Rashida C McCoy

(74) *Attorney, Agent, or Firm*—Greer, Burns & Crain, Ltd.

(57) **CLAIM**

The ornamental design for a portion of a footwear upper, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a portion of a footwear upper showing my new design;

FIG. 2 is a side elevational view thereof;

FIG. 3 is an opposite side elevational view thereof;

FIG. 4 is a front elevational view thereof;

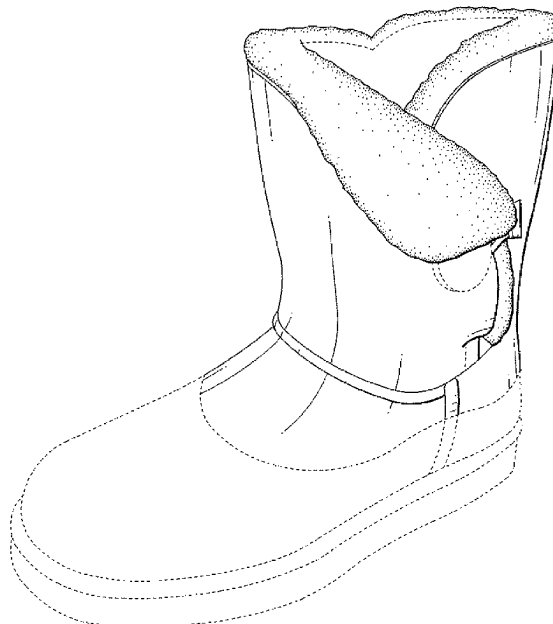
FIG. 5 is a rear elevational view thereof;

FIG. 6 is a top plan view thereof; and,

FIG. 7 is a bottom plan view thereof.

The broken lines in FIGS. 1-7 represent portions of the footwear that form no part of the claimed design. The broken line which defines the bounds of the claimed design forms no part thereof.

1 Claim, 6 Drawing Sheets



U.S. Patent

Sep. 15, 2009

Sheet 1 of 6

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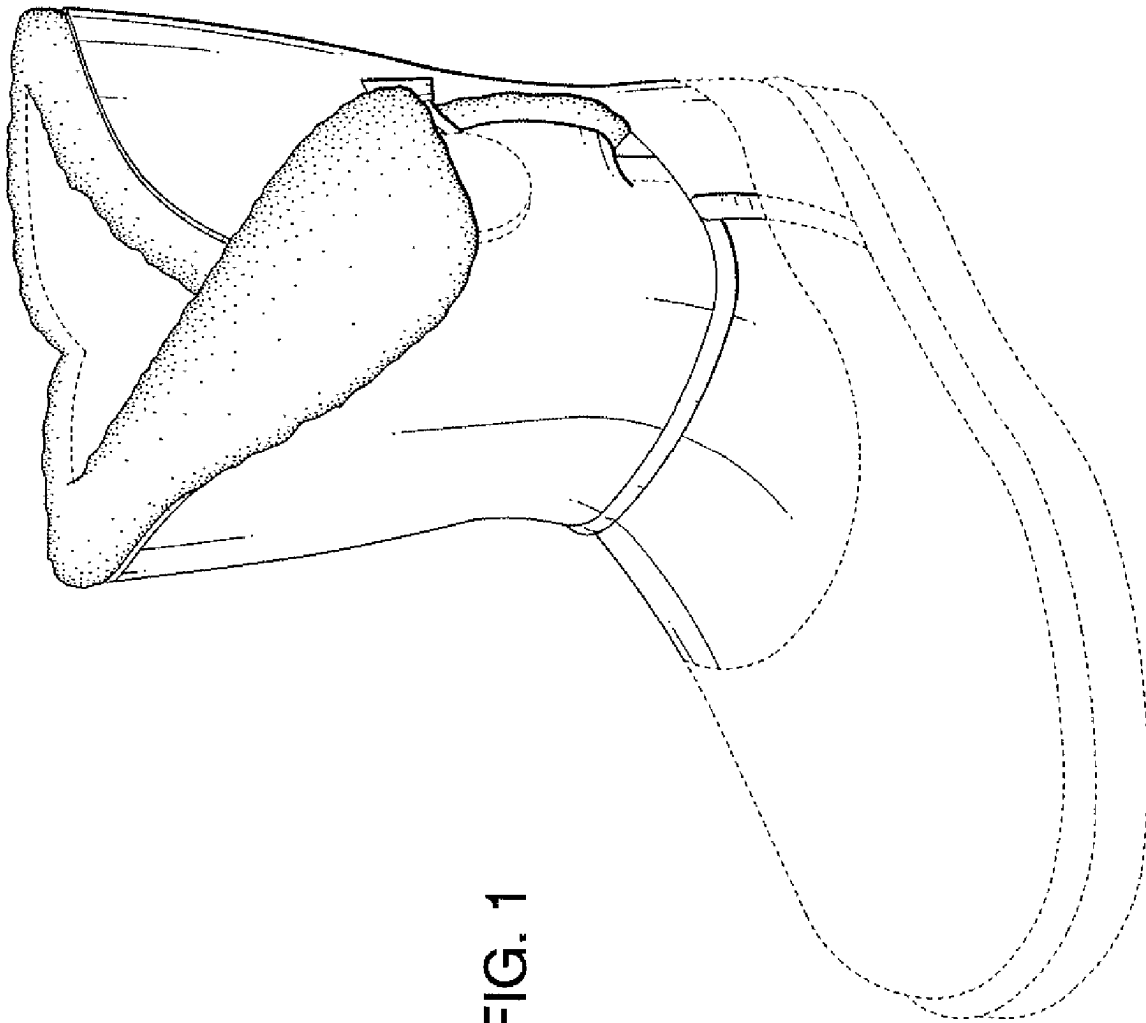


FIG. 1

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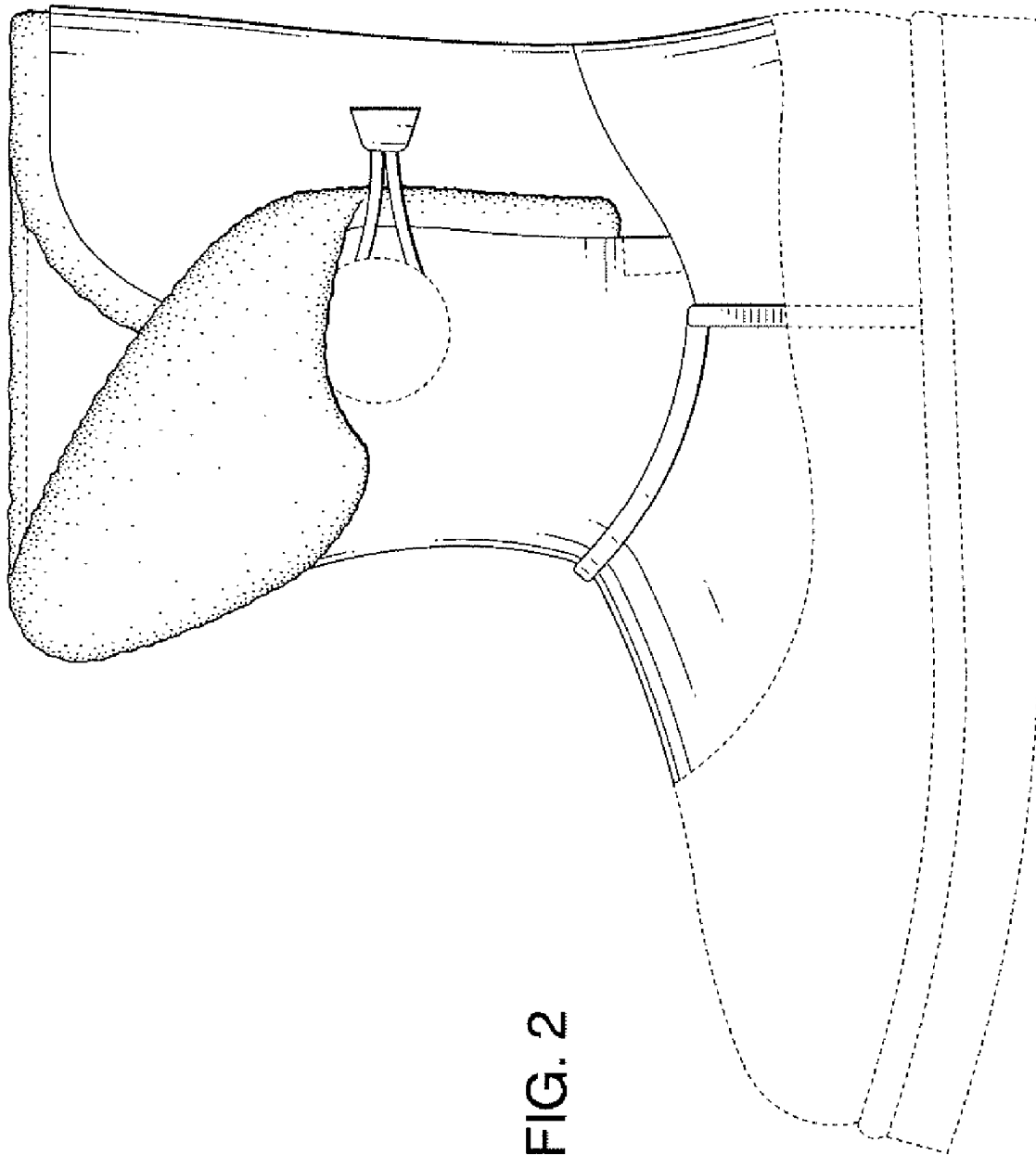


FIG. 2

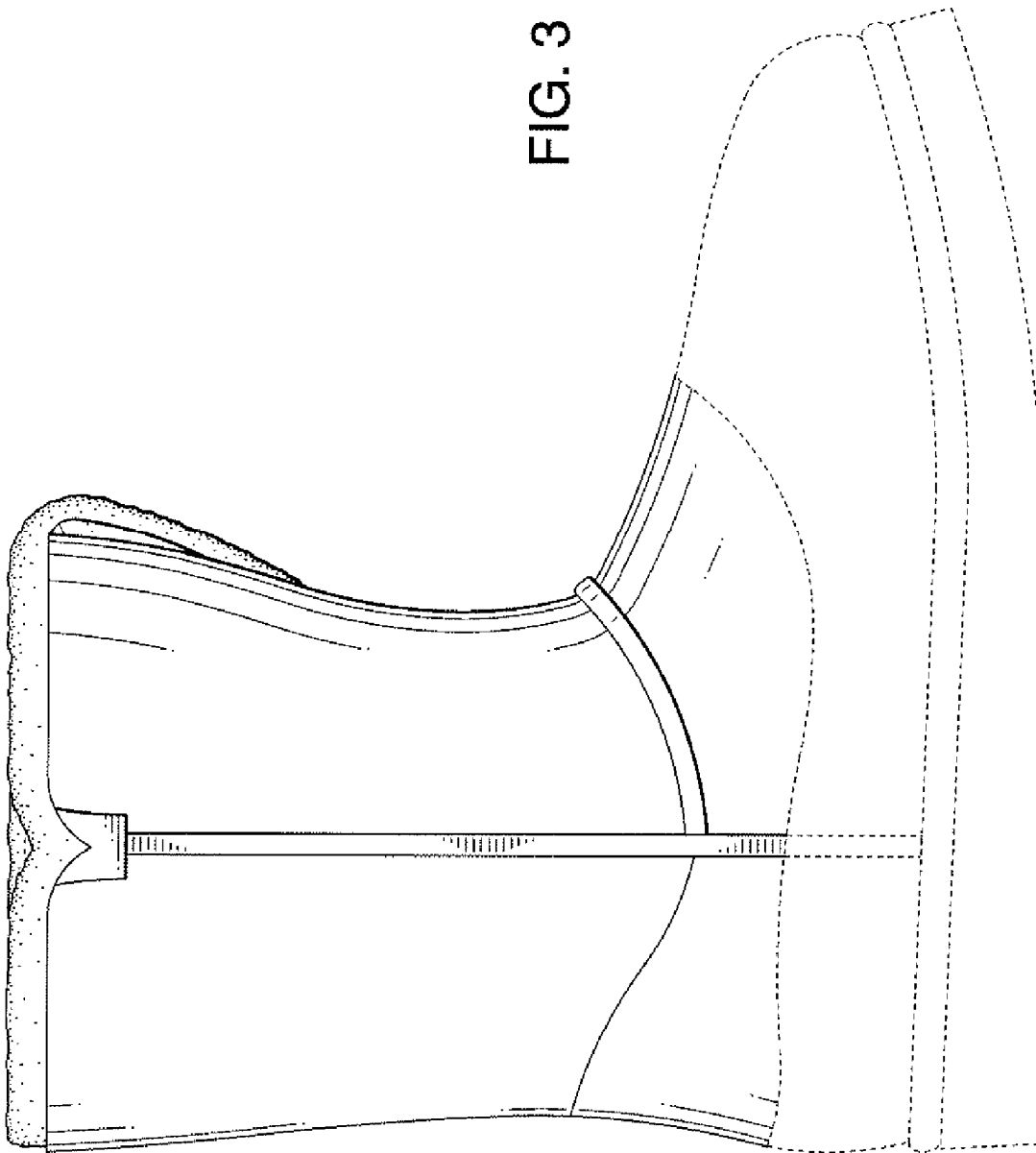
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FIG. 3

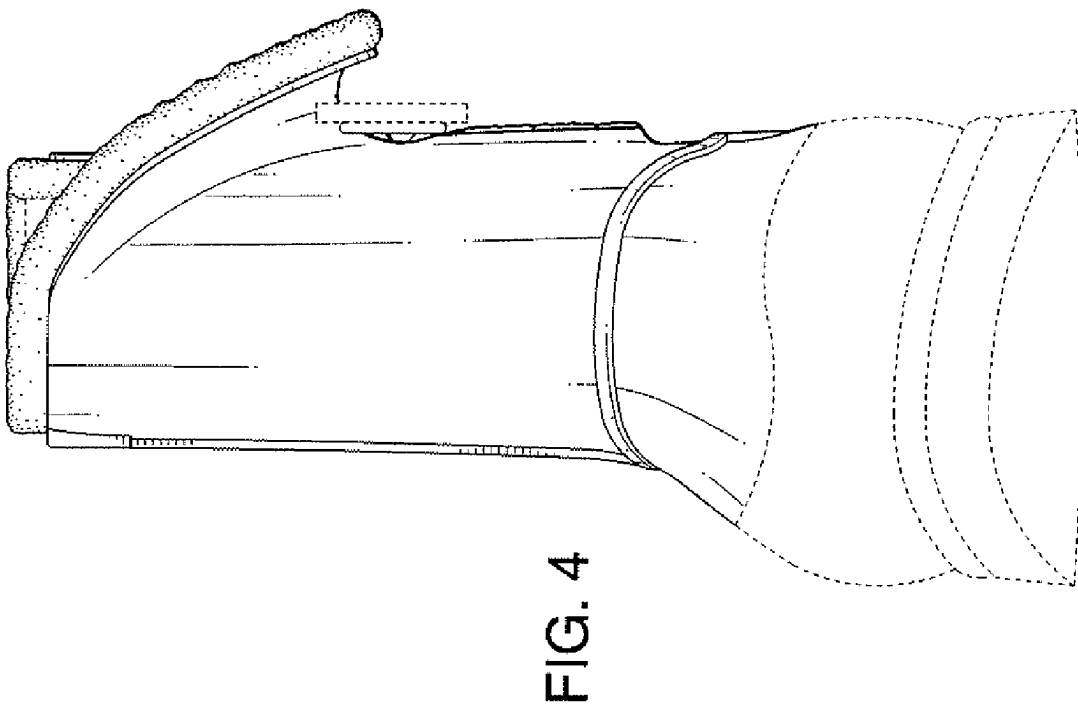
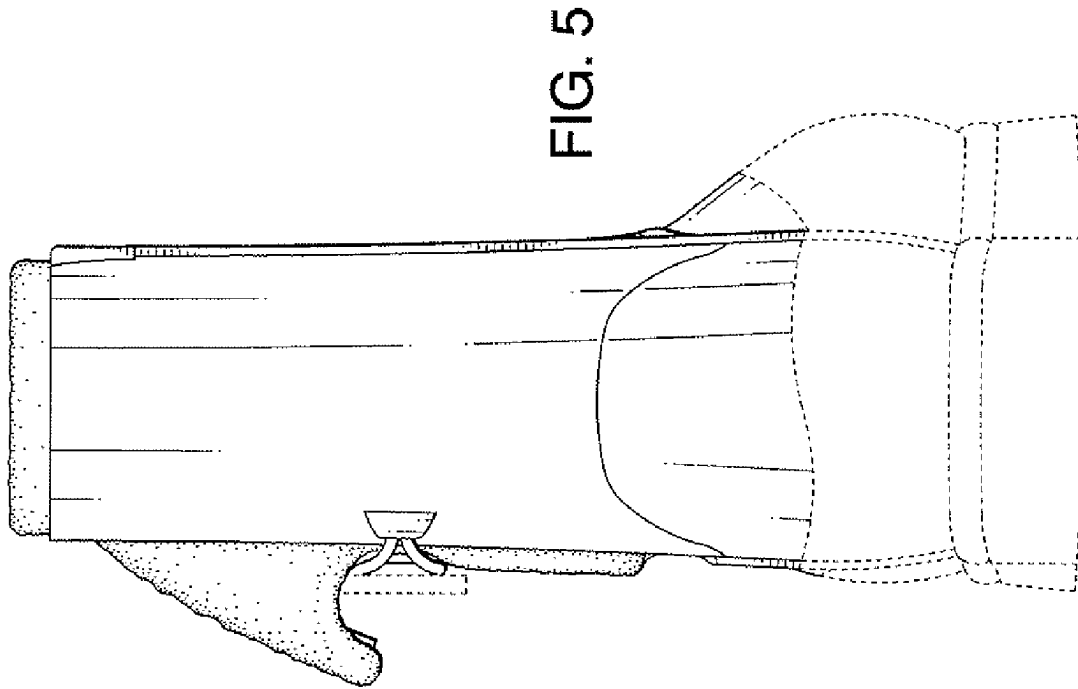


U.S. Patent

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U.S. Patent

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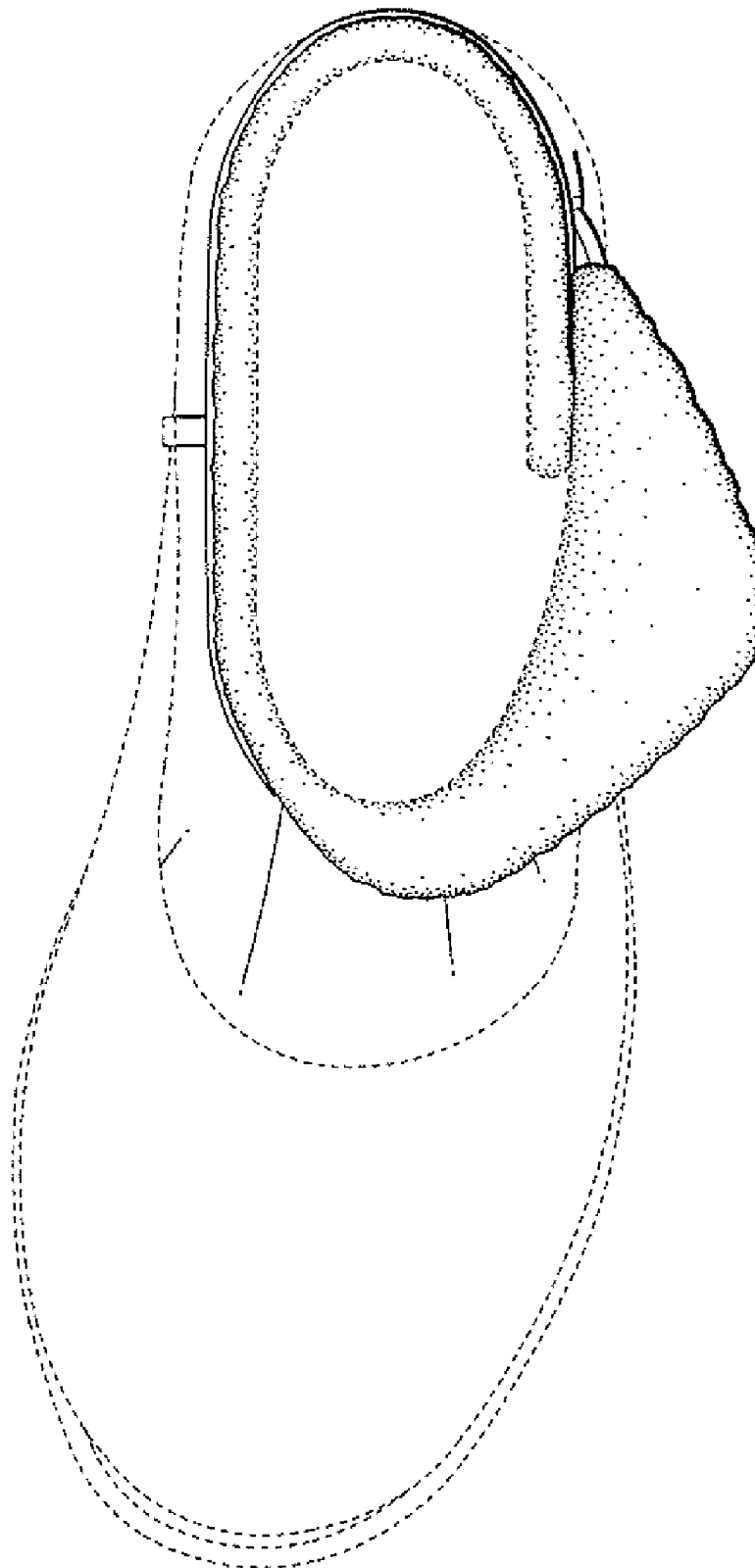


FIG. 6

U.S. Patent

Sep. 15, 2009

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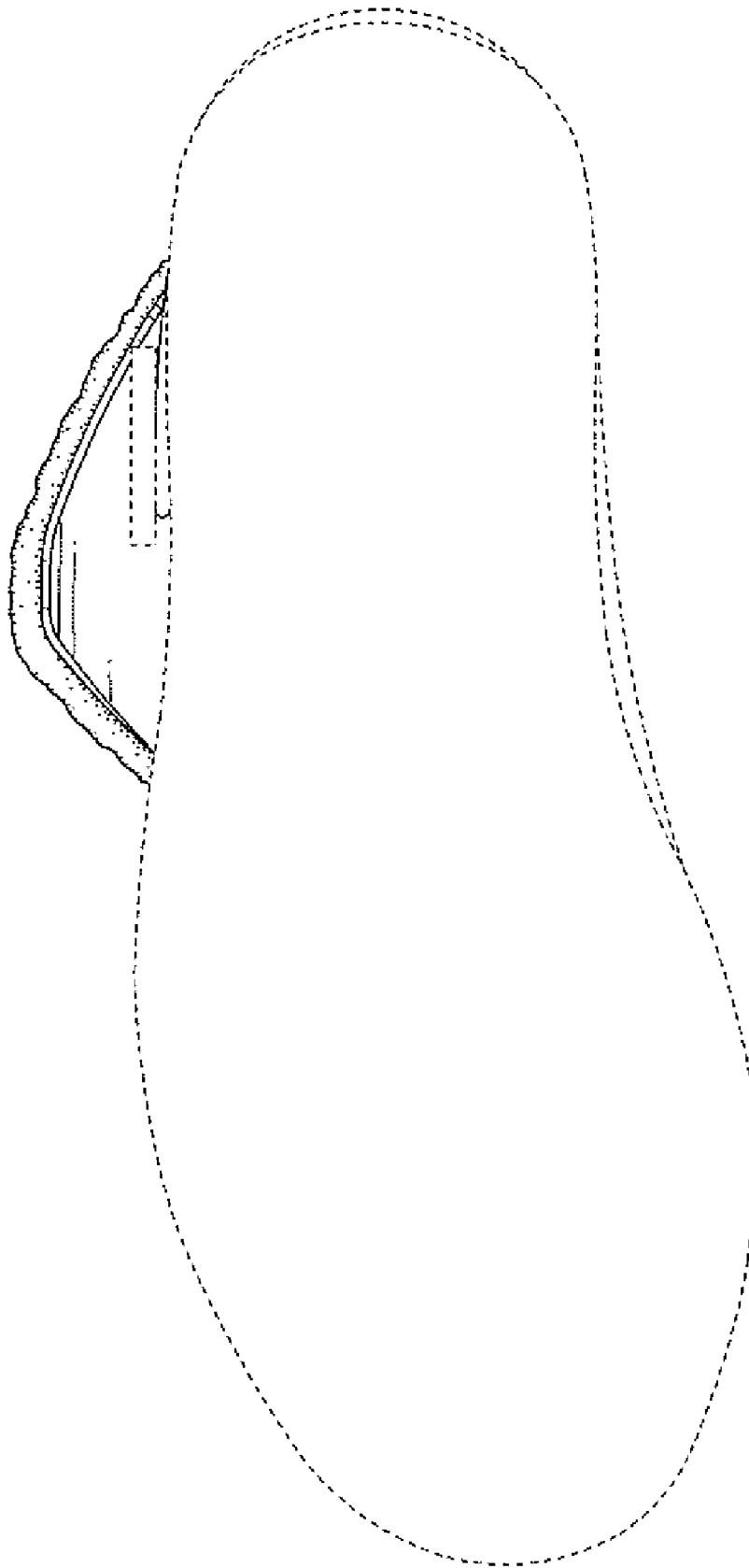


FIG. 7